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May 27, 2015

Mayor Robert G. Ortt
Members of the Common Council
City of North Tonawanda
216 Payne Avenue
North Tonawanda, New York 14120

Report Number: S9-14-42

Dear Mayor Ortt and Members of the Common Council:

The Office of the State Comptroller works to help city officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support city operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and City Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of 10 municipalities (seven cities and three villages) throughout New York State. The objective of our audit was to determine if the use of municipal resources resulted in an effective enforcement of the Fire Code¹ (i.e., fire safety of buildings). We included the City of North Tonawanda (City) in this audit. Within the scope of this audit, we examined the City's process for evaluating fire safety plans and procedures for the period January 1 through December 31, 2013. Following is a report of our audit of the City. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the City. We discussed the findings and recommendations with City officials and considered their comments, which appear in Appendix A, in preparing this report. City officials agreed with our recommendations and indicated they plan to take corrective action. At the completion of our audit of the 10 municipalities, we prepared a global report that summarizes the significant issues we identified at all the municipalities audited.

¹ 2010 Fire Code of New York State

Summary of Findings

We found that the City could improve its controls for evaluating fire safety plans and evacuation plans and confirming evacuation drills are performed for buildings in its jurisdiction. The City's Fire Prevention Unit does not know how many buildings in its jurisdiction are required to have a fire safety plan and evacuation plan on file, and it does not review or approve fire safety plans or evacuation plans, as required. In addition, it does not confirm that buildings conduct the required number of evacuation drills each year.

We sampled four buildings to determine if the fire safety plans and evacuation plans on file were complete and in conformance with the 2010 Fire Code of New York State (Fire Code). We found that all of the fire safety and evacuation plans were incomplete and did not comply with the Fire Code. In addition, two of the buildings did not conduct the required number of evacuation drills.

The City also did not submit its 2013 Uniform Code Administration and Enforcement Report to the Department of State (DOS), as required.

Background and Methodology

The City has a population of approximately 31,000 residents and is governed by a six-member Common Council (Council), comprising a mayor and five council members. The City's 2013 budget totaled \$35.5 million, which includes the City Fire Department's (Department) budget of \$3.6 million. The Department is responsible for monitoring fire safety in the City.

The Fire Chief oversees the general management of the Department and Fire Code² enforcement. In an effort to monitor fire safety within the City, the Department budget includes funding for a Fire Prevention Unit that is responsible for reviewing and approving fire safety plans (fire plan) and evacuation plans, as well as verifying the number of evacuation drills (drills) exercised at the buildings within its jurisdiction.

The Fire Code³ establishes the minimum requirements for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises. It also provides safety to fire fighters and emergency responders during emergency operations.

The Fire Code requires both an approved fire plan and an evacuation plan to be prepared and maintained for most buildings. The plans must be reviewed or updated at least once a year, or as necessitated by changes in staff assignments, occupancy or building layout. The plans must be available in the workplace for reference and review by employees, and copies must be provided to the code enforcement official upon request.

² The 2010 Fire Code of New York State is the most up-to-date version available (see also 19 NYCRR 1225.1 [c] which amends section 610 of the Fire Code). The Fire Code is part of the New York State Uniform Fire Prevention and Building Code.

³ 2010 Fire Code of New York State Chapter 1 Section 101.3

The Executive Law⁴ and New York State Codes, Rules and Regulations (NYCRR)⁵ generally provide that cities, counties, towns and villages are responsible for enforcing the New York State Uniform Fire Prevention and Building Code⁶ (Uniform Code). However, the State Education Department is responsible for Uniform Code enforcement with respect to school districts' and boards of cooperative education services' buildings.

Administration and enforcement of the Uniform Code generally are made through local law, ordinance or other appropriate regulation. However, a local government has the option to decline that responsibility; when this occurs, the responsibility passes to the respective county. Counties are afforded a similar option. If a local government and a county each exercise their option not to enforce the Uniform Code, the statute provides that the Secretary of State shall, directly or by contract, administer and enforce the Uniform Code.

The Uniform Code requires every city, county, town and village charged with enforcing the Uniform Code to maintain a system of records that supports its code enforcement activities. Buildings that contain an area of public assembly must be inspected each year, while all other buildings requiring a fire safety and evacuation plan must have a fire safety inspection at least every three years. It also requires local governments to annually submit to the Secretary of State a report of their activities relative to administration and enforcement of the Uniform Code.⁷

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those operations within our audit scope. Further, those standards require that we understand the management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

Audit Results

Fire Safety Plan – Local governments must evaluate compliance with the Fire Code. Therefore, the City must verify that certain buildings in its jurisdiction have a fire plan that complies with the Fire Code. The Fire Code establishes the seven basic requirements each fire plan must contain. For example, the fire plan must include a procedure for reporting a fire or other emergency. The fire plan also must have a list of major fire hazards associated with the normal use and occupancy of the premise, including maintenance and housekeeping procedures. Appendix B details the seven fire plan requirements.

A properly developed fire plan can help ensure that responsible parties notify building occupants of an emergency and that evacuations will occur when necessary. It can also ensure that responsible parties promptly notify the Department of an emergency and convey relevant information, such as identification of hazardous material. The Fire Prevention Unit is responsible for ensuring that each

⁴ Section 381 (2)

⁵ 19 NYCRR Part 1203

⁶ See 19 NYCRR 1225.1

⁷ See 19 NYCRR 1203.4

building requiring a fire plan has one that complies with the Fire Code. Furthermore, the NYCRR requires the City to keep records relating to the fire safety and property maintenance inspections it conducts.

To determine if the Fire Prevention Unit reviews and approves fire plans as required by law, we visited four buildings⁸ and obtained the fire plans on file. We looked for evidence that the Fire Prevention Unit reviewed and approved each fire plan within the NYCRR timeframe. We also reviewed the fire plans for completeness with the Fire Code requirements.

We found that the four buildings had fire plans but they were incomplete and did not comply with the Fire Code. These four buildings comprised an adult senior center, two preschools and a private school. The missing building fire safety plan components for each of these buildings are detailed in Figure 1.

Figure 1: Missing Building Fire Safety Plan Components^a

| Building | Fire and Emergency Reporting | Life Safety Strategy | Site Plans | Floor Plans | Fire Hazards | Fire Prevention and Control System | Fuel Hazard Sources |
|---------------------|---|-------------------------------------|-----------------------|------------------------|-------------------------|---|------------------------------------|
| Adult Senior Center | | | ✓ | | | ✓ | |
| Preschool | ✓ | | ✓ | | ✓ | ✓ | ✓ |
| Preschool | | | ✓ | | ✓ | ✓ | ✓ |
| Private School | ✓ | | ✓ | | ✓ | ✓ | ✓ |

^a See Appendix B for the specific fire safety plan requirements.

We found no evidence the Fire Prevention Unit reviewed and approved any of the plans within the statutory timeframes, as required. City officials said that they did not know they were required to review and approve the fire plans.

The Fire Code states that it was established, among other things, to ensure the protection of human life and property protection.⁹ Our review found that, while each building we visited had a fire plan, all of the plans were incomplete and did not comply with the Fire Code. Incomplete fire plans may lead to an increased chance of a loss of life or property damage.

Evacuation Plan – Buildings requiring a fire plan must also maintain an evacuation plan. The Fire Code establishes the eight basic requirements each evacuation plan must contain. For example, an evacuation plan must include emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only. The evacuation plan also must include procedures for accounting for employees and occupants after an evacuation has been completed. Appendix B details the eight evacuation plan requirements. The Fire Prevention Unit is also responsible for ensuring that each building requiring an evacuation plan

⁸ We judgmentally chose a sample of four buildings for our audit testing. We selected buildings that are occupied by children or elderly individuals or which have a high number of daily occupants or visitors.

⁹ 2010 Fire Code of New York State Chapter 1 Section 101.3

has one that complies with the Fire Code. Furthermore, the NYCRR requires the City to keep records relating to the fire safety and property maintenance inspections it conducts.

To determine if the Fire Prevention Unit reviews and approves evacuation plans as required by law, we also obtained the evacuation plans on file for the four buildings previously discussed. We looked for evidence that the Fire Prevention Unit reviewed and approved each plan within the statutory timeframe. We also reviewed the evacuation plans for completeness with the Fire Code requirements.

We found that the four building evacuation plans did not meet the Fire Code requirements. The four buildings comprised an adult senior center, two preschools and a private school. The missing evacuation plan components for each incomplete evacuation plan are detailed in Figure 2.

Figure 2: Missing Evacuation Plan Components^a

| Building | Escape Routes | Critical Equipment | Occupant Accounting | Rescue/ Emergency Aid | Occupant Notification Method | Emergency Reporting | Contact | Emergency Communication System |
|---------------------|----------------------|---------------------------|----------------------------|------------------------------|-------------------------------------|----------------------------|----------------|---------------------------------------|
| Adult Senior Center | | | | | | | ✓ | ✓ |
| Preschool | | ✓ | | | ✓ | ✓ | ✓ | ✓ |
| Preschool | | ✓ | | | | | ✓ | ✓ |
| Private School | | ✓ | | ✓ | ✓ | ✓ | ✓ | ✓ |

^a See Appendix B for the specific evacuation plan requirements

Like the fire plans, we found that the evacuation plans were never reviewed or approved as required. Again, City officials did not know they were required to review and approve the evacuation plans. As a result, the City has no assurance that each City building requiring an evacuation plan has one that meets minimum Fire Code requirements. In addition, building occupants may not be prepared to react to an emergency evacuation.

Evacuation Drills – The Fire Code also requires buildings to have a specified number of drills conducted each year. Drills help ensure that building occupants are prepared to respond to an emergency evacuation, and the drills can identify improvement opportunities. The number of drills required is based on how a building is used. For example, a private school is required to conduct 12 drills each year while an office building must conduct two. Appendix B details the building types and drill requirements. The City must verify that the required number of drills are being conducted each year and the Fire Prevention Unit is responsible for verifying that the drills have been performed. Furthermore, the NYCRR requires the City to keep records relating to the fire safety and property maintenance inspections it conducts.

We also obtained evidence to determine whether the required drills were conducted annually at the four buildings previously discussed. We found that, in calendar year 2013, two buildings did not conduct the required number of drills. The two deficient buildings included an adult senior

center and a private school. Figure 3 compares the drill requirements to the number of drills performed at each building.

| Figure 3: Fire Code Evacuation Drill Requirements Compared to Drills Performed | | | |
|---|--|-------------------------|-----------------|
| Building Type | Annual Evacuation Drill Requirement^a | Drills Performed | Variance |
| Adult Senior Center | 4 | 0 | (4) |
| Private School | 12 | 8 | (4) |
| ^a See Appendix B | | | |

We did not find evidence the Fire Prevention Unit confirmed that the required number of drills were conducted at the buildings. City officials informed us that they only verify drills conducted at schools and hospitals; however, they did not have evidence to support these verifications. As a result, the City has no assurance that drills are being performed at each building as required. When the required number of drills are not performed, building occupants are likely less prepared to conduct an emergency evacuation, which could affect an evacuation outcome.

Uniform Code Administration and Enforcement Report – The NYCRR¹⁰ requires every local government charged with administration and enforcement of the Uniform Code to annually submit to the Secretary of State a report of its activities relative to administration and enforcement of the Uniform Code (report).

City officials assigned the responsibility of filing the report with the DOS to the City’s Building Inspector. However, he did not complete or submit a report detailing the City’s 2013 enforcement activities to the DOS. Therefore, the City did not comply with the NYCRR. In addition, we found that the Department does not know how many City buildings should have a fire plan and evacuation plan on file or what buildings should conduct evacuation drills.

Recommendations

The Fire Prevention Unit should:

1. Review and approve all fire plans and evacuation plans in accordance with the Fire Code.
2. Keep documented evidence detailing when fire plans and evacuation plans were reviewed and approved.
3. Determine whether the required number of drills are conducted in accordance with the Fire Code and maintain documented evidence of these reviews.
4. Ensure that buildings requiring a fire plan and evacuation plan have plans that meet the minimum Fire Code requirements.

¹⁰ 19 NYCRR 1203.4

5. Identify which City buildings must have a fire plan and evacuation plan and what buildings must conduct evacuation drills.

The Building Inspector should:

6. File the Uniform Code Administration and Enforcement Report each year, as required.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Council should make the CAP available for public review in the Clerk's office.

We thank City officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM CITY OFFICIALS

The City officials' response to this audit can be found on the following page.

CITY OF NORTH TONAWANDA

Office of the Mayor

ROBERT G. ORTT

December 4, 2014

Ann C. Singer, Chief Examiner
State Office Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Ms. Stinger:

We are in receipt of your audit and are responding with the following as a response to the corrective action plan for submittal.

The North Tonawanda Fire Department is determined to improve its documentation and enforcement of the State Codes. The Department, along with the City Building Codes and Assessor's offices for the City of North Tonawanda, has made great strides to address deficiencies recognized by the auditors. These improvements are listed within our "Corrective Action Plan," along with the projected completion dates.

CORRECTIVE ACTION PLAN

1. Compilation of all buildings that are under jurisdiction of Chapter 4 which should be completed by the end of 2014.
2. Reaching out to property owners on that list to schedule the required evacuation drills along with documentation. Completion by February 2015.
3. Review of any existing Fire Safety Plans and approval of same. Completion June 2015.
4. Encourage and assist in any plans from properties that are deficient.

Completion is uncertain at this time due to lack of list of occupancies, but will move forward as time permits. This will be completed through individual meetings and communications with property owners.

Again, the City as well as our Fire Department take this audit very seriously and will continue to task not only the Fire Prevention Office, but the entire Department and our four newest "Fire Code Enforcement Officers" to complete our plan and continue to improve it.

Should you have any further questions, please feel free to contact my office.

Faithfully yours,

Robert G. Ortt
Mayor

APPENDIX B

Fire Safety Plans, Fire Evacuation Plans and Emergency Evacuation Drills¹¹

Fire Safety Plans Must Include:

1. The procedure for reporting a fire or other emergency.
2. The life safety strategy and procedures for notifying, relocating or evacuating occupants.
3. Site plans indicating the following:
 - 3.1 The occupancy assembly point.
 - 3.2 The location of fire hydrants.
 - 3.3 The normal routes of fire department vehicle access.
4. Floor plans identifying the locations of the following:
 - 4.1 Exits.
 - 4.2 Primary evacuation routes.
 - 4.3 Secondary evacuation routes.
 - 4.4 Accessible egress routes.
 - 4.5 Areas of refuge.
 - 4.6 Manual fire alarm boxes.
 - 4.7 Portable fire extinguishers.
 - 4.8. Occupant-use hose stations.
 - 4.9 Fire alarm annunciators and controls.
5. A list of major fire hazards associated with the normal use and occupancy of the premises, including maintenance and housekeeping procedures.
6. Identification and assignment of personnel responsible for maintenance of systems and equipment installed to prevent or control fires.
7. Identification and assignment of personnel responsible for maintenance, housekeeping and controlling fuel hazard sources.

¹¹ We obtained the requirements for the Fire Safety Plans, Fire Evacuation Plans and Emergency Evacuation Drills from the 2010 Fire Code of New York State.

Fire Evacuation Plans Must Include:

1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only.
2. Procedures for employees who must remain to operate critical equipment before evacuating.
3. Procedures for accounting for employees and occupants after evacuation has been completed.
4. Identification and assignment of personnel responsible for rescue or emergency medical aid.
5. The preferred and any alternative means of notifying occupants of a fire or emergency.
6. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.
7. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan.
8. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.

| Figure 4: Fire and Evacuation Drill Frequency and Participation Requirements | | |
|--|-------------------------|------------------------|
| Group or Occupancy | Frequency | Participation |
| Group A | Quarterly | Employees |
| Group A ^a | Three Annually | All occupants |
| Group B ^b | Two Annually | All occupants |
| Group B ^a | Three Annually | All occupants |
| Group E | Monthly ^c | All occupants |
| Group I | Quarterly on each shift | Employees ^d |
| Group R-1 | Quarterly on each shift | Employees |
| Group R-2 ^a | Four Annually | All Occupants |
| Group R-4 | Quarterly on each shift | Employees ^d |
| High-rise buildings | Annually | Employees |
| ^a Applicable to college and university buildings in accordance with Fire Code Section 408.3 ^b Group B buildings having an occupant load of 500 or more persons, or more than 100 persons above or below the lowest level of exit discharge ^c The frequency shall be allowed to be modified in accordance with Fire Code Section 408.3.2. ^d Fire and evacuation drills in residential care assisted living facilities shall include complete evacuation of the premises in accordance with Fire Code Section 408.10.5. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program. | | |

Definitions of Each Group or Occupancy From the 2010 Fire Code of New York State With Examples:

Group A: Assembly Group A occupancy includes, among others, the use of a building for the gathering of persons for purposes such as civic, social or religious functions; recreation, food or drink consumption; or awaiting transportation. Examples include movie theatres, restaurants and arenas.

Group B: Business Group B occupancy includes, among others, the use of a building for office, professional or service-type transactions, including storage of records and accounts. Examples include banks, civic administration and outpatient clinics.

Group E: Educational Group E occupancy includes, among others, the use of a building by six or more people at any one time for educational purposes through the 12th grade. This

group also includes day cares with more than five children who are older than two-and-a-half years of age.

Group I: Institutional Group I occupancy includes, among others, the use of a building in which people are cared for or living in a supervised environment. Such occupants have physical limitations because of health or age; are harbored for medical treatment or other care or treatment; or are detained for penal or correctional purposes or other purposes in which their liberty is restricted. Examples include hospitals, nursing homes and jails.

Group R: Residential Group R includes, among others, the use of a building for sleeping purposes.

R-1: Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including boarding houses (transient), hotels (transient) and motels (transient).

R-2: Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including apartment houses, boarding houses (nontransient), convents, dormitories, fraternities and sororities, hotels (nontransient), monasteries, motels (nontransient) and vacation timeshare properties.

R-4: Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than five but not more than 16 occupants, excluding staff.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To complete our objective, we interviewed City and Department officials and reviewed procedures used to monitor drill logs, fire safety plans and evacuation plans to determine whether the City is effectively enforcing the Fire Code. We also reviewed the City's policies and procedures for approving/reviewing fire safety and evacuation plans.

We selected a judgmental sample of four buildings for the audit period by selecting buildings that are occupied with children or elderly individuals or have a high number of daily occupants or visitors. We obtained and reviewed each building's drill logs, fire safety plan and evacuation plan. We compared each building's fire safety and evacuation plans to the Fire Code to determine if the plans contained all required components. We also examined each plan to determine if the Fire Prevention Unit reviewed and approved each plan. In addition, we compared the number of drills each building owner conducted to the Fire Code to confirm whether the building owner conducted the required number of drills. We also interviewed officials to learn if they filed a report of the City's activities relative to administration and enforcement of the Uniform Code.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.